

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JASPER COLEMAN
2507 N. 1st Street
Milwaukee, WI 53212,

Plaintiff,

Case No. 2:18-cv-_____

v.

LEVY RESTAURANTS, a subsidiary of
COMPASS GROUP USA, INC.
authorized to do business in Wisconsin,
with a principal office located at
2400 Yorktown Rd.
Charlotte, NC 28217

Defendants.

FEDERAL COMPLAINT WITH JURY DEMAND

NOW COMES the above-named Plaintiff, by and through attorney WALTER W. STERN III, and for the causes of action against the above-named Defendant, Plaintiff alleges and shows claims for relief as follows:

1. This is a federal civil rights action under Title VII of the Civil Rights Act of 1964.

JURISDICTION AND VENUE

Jurisdiction

2. The jurisdiction of the Court is pursuant to Title VII of the Civil Rights Act of 1964, as amended, and § 704(a) of Title VII and 28 USC Sec. 1331, 1343(a)(3) and 1367(a).

Venue

3. The Eastern District of Wisconsin is the proper federal venue for this action, pursuant to Title 28 of the United States Code, Section 1391 (t), because it is the judicial district

where the constitutional rights violations of JASPER COLEMAN were committed and where the Defendant does business.

CLAIM 1 - TERMINATION

4. That on or before January 17th, 2017 and January 20th, 2017, said Plaintiff was employed at Levy Restaurant, Defendant herein, located at 400 W. Wisconsin, Milwaukee, Wisconsin 53203.
5. That the Plaintiff had been employed at Defendant Levy Restaurant as a dishwasher/steward for the Defendant business, who nationally provides catering to various businesses throughout the United States, and, in this case, in Milwaukee, Wisconsin.
6. That his employment with Defendant consisted of cleaning, dishwashing, prepping food and conveying items to the main business of Defendant, as well as other duties.
7. That prior to his termination from employment on January 20th, 2017, he was employed and had filed Civil Rights complaints against the Defendant (Charge No. 443-2008-00256 and 443-2010-01740).
8. That the Plaintiff is an African-American male, and he filed his complaints under Title VII of the 1964 Civil Rights Act, as amended.
9. That on or about January 20th, 2017, a co-worker named David Esaman, of Asian descent, was working along side of the Plaintiff as a dishwasher.
10. Said co-worker, David Esaman, became belligerent and angry when the Plaintiff and one other employee criticized him for not doing his work and taking so many breaks that both employees had to handle his duties, which created an undue hardship with respect to both of them.

11. That an argument then ensued between the Plaintiff and said David Esaman, who threatened him by indicating that he was going to kick Plaintiff's ass, threatened him through the use of martial arts, stating he was a black belt; raised his voice; and indicated that he was going to physically attack said Plaintiff.
12. That both the Plaintiff, an African-American, and his co-worker, David Esaman, an Asian by descent, were suspended; upon information and believe, on January 12th, 2017, and said co-worker, David Esaman, did ultimately receive his job back, even though he was more aggressive, threatening and not doing his job, as alleged in Paragraphs 10 and 11 herein, and the Plaintiff was terminated and not reinstated on or about January 20th, 2017.
13. That the refusal of Defendant to reinstate the Plaintiff was intentional discrimination because he was African-American, and the co-worker, David Esaman, was an Asian-American, is a violation of Title VII of the 1964 Civil Rights Act, as amended, and Section 704(a) of Title VII.
14. That further, the Defendant retaliated against the Plaintiff for filing previous charges of discrimination with the Equal Opportunity Employment Commission.
15. That the Plaintiff had been employed by the Defendant for approximately seven (7) years prior to the time of his termination, which Mr. Esaman had been employed by the Defendant for a period of approximately one year.
16. That the Plaintiff has still not been reinstated, and he has suffered wage loss, including normal raises that he would have received had he continued to be employed by Defendant.

17. That as a result of the Defendant employer's conduct, the Plaintiff suffered pain, depression, anxiety, and other injury, physical and mental, as a result of the violation of Title VII of the 1964 Civil Rights Act, both past and future, in an amount to be determined by the trier of fact.
18. The intentional discrimination was willful, malicious and/or reckless, justifying an award of punitive damages.
19. That the Plaintiff filed an action with the United States Equal Employment Opportunity Commission on or about May 10th, 2017, such charge of discrimination is marked as **Exhibit "A"** and incorporated into the Complaint by reference hereto.
20. That on or about April 19th, 2018, the District Director of the US Equal Opportunity Employment Commission located in Milwaukee, entered a determination finding that the charging party was discriminated against the Plaintiff by virtue of his being terminated and denied reinstatement due to his being an African-American, and in retaliation of his current complaint and prior complaints of discrimination filed with the US Equal Opportunity Employment Commission. That said determination is marked as **Exhibit "B"** and incorporated into this Complaint by reference hereto.
21. That the Plaintiff has suffered wage loss by virtue of his termination and his failure to be reinstated with the Defendant employer in an amount to be determined by the jury.
22. That on or about June 11th, 2018, the United States Equal Opportunity Employment Commission entered a "right to sue" letter marked hereto as **Exhibit "C"** and incorporated into this Complaint by reference hereto.
23. That said notice of a right to sue was received by the Plaintiff on or about June 14th, 2018.

DEMAND FOR JUDGMENT

WHEREFORE, the Plaintiff demands judgment against the Defendant as follows:

- a. A finding that the Title VII of the 1964 Civil Rights Act was violated by virtue of the Defendant's termination of the Plaintiff, and that he retaliated against under said Act;
- b. For reinstatement as an employee with the Defendant employer;
- c. For all past due wages;
- d. A finding that Plaintiff is entitled to compensatory damages for past and future injury;
- e. That the trier of fact impose punitive damages against the Defendant due to its malicious and/or reckless conduct;
- f. For all costs, disbursements, interest and reasonable attorney's fees pursuant to Title 42 of the United States Code, Section 1988; and
- g. For such other and further relief as the Court deems just and equitable.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL OF THIS ACTION
ON ALL ISSUES SO TRIABLE.

Dated this 13th day of August, 2018

By: electronically signed by Walter W. Stern III
WALTER W. STERN III
Counsel for Plaintiff
920 85th Street, Unit 123
Kenosha, WI 53143
(262) 880-0192/(262) 997-1101
wstern1@wi.rr.com

EXHIBIT “A”

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**443-2017-00857****Wisconsin Equal Rights Division**

State or local Agency, if any

and EEOC

Name (indicate Mr., Ms., Mrs.)

Mr. Jasper Coleman

Home Phone (Incl. Area Code)

(414) 264-3984

Date of Birth

1984

Street Address

City, State and ZIP Code

Po Box 06284, Milwaukee, WI 53206

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

LEVY RESTAURANT

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(414) 908-6150

Street Address

City, State and ZIP Code

400 W. Wisconsin Ave., Milwaukee, WI 53203

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE
Earliest Latest**01-20-2017****03-29-2017**☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I. I started working for the Respondent in May 2006 as a Steward/Dishwasher. I have filed previous complaints against the Respondent (Charge numbers 443-2008-00256 and 443-2010-01740). In January 2017, I was terminated for an altercation with an Asian co-worker. In March 2017, I became aware that the co-worker had been rehired.

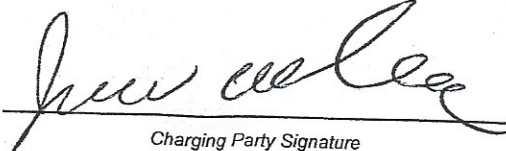
II. I believe that I have been discriminated against due to my race (Black) and in retaliation for engaging in protected activity in violation of Title VII of the Civil Rights Act of 1964, as amended (Title VII) and Section 704(a) of Title VII.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

May 10, 2017

Date



Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

5/10/17 

EXHIBIT “B”



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Milwaukee Area Office

310 West Wisconsin Avenue, Suite 500
Milwaukee, WI 53203-2292
Milwaukee Direct Dial: (414) 297-1112
TTY (414) 297-1115
FAX (414) 297-4133 & 3146

Charge Number: 443-2017-00857

Jasper Coleman
P.O. Box 06284
Milwaukee, Wisconsin 53206
Charging Party

vs.

Levy Restaurants
400 West Wisconsin Avenue
Milwaukee, Wisconsin 53203
Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

The Respondent is an employer within the meaning of Title VII and all requirements for coverage have been met.

Charging Party alleged that he was discriminated against in violation of Title VII in that he was terminated and denied reinstatement due to his race (Black) and retaliation.

I have considered all the evidence disclosed during the investigation and find that there is reasonable cause to believe that there is a violation of Title VII, in that the Respondent terminated him and failed to reinstate him due to his race (Black).

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement. That agreement should be provided to the Commission representative within (14) days of the date of this determination. The remedies for violations of the statutes we enforce are designed to make the identified victims whole and to provide corrective and preventative relief. These remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices,

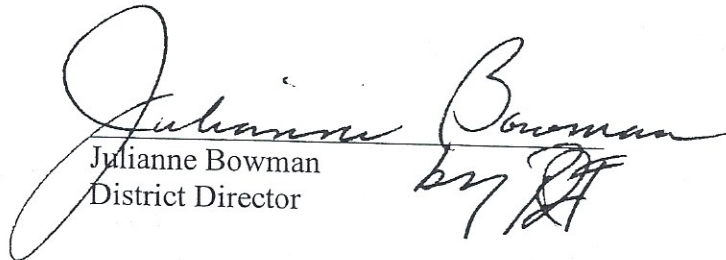
placement of identified victims in positions they would have held but for the discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation(s) and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent within (14) days, we may conclude that further conciliation efforts in this matter would be futile or non-productive.

On behalf of the Commission:

APR 19 2018

Date


Julianne Bowman
District Director

cc: Ashley Newkirk
Compass Group USA, Inc.
2400 Yorkmont Road
Charlotte, North Carolina 28217

EXHIBIT “C”

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To: Jasper R. Coleman
Po Box 06284
Milwaukee, WI 53206

From: Milwaukee Area Office
310 West Wisconsin Ave
Suite 500
Milwaukee, WI 53203



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

443-2017-00857

Barbara L. Ystenes,
Investigator

(414) 297-4063

TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Julianne Bowman,
District Director



Ashley Newkirk
Compass Group USA
2400 Yorkmont Rd, Legal Dept
Charlotte, NC 28217

Enclosures(s)

JUN 11 2018

(Date Mailed)

cc:

LEVY RESTAURANTS
400 W. Wisconsin Ave.
Milwaukee, WI 53203

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)